

BEFORE THE SHOPELINES HEARINGS BOARD
STATE OF WASHINGTON

LAKE UNION MOORINGS ASSOCIATES,)
)
Appellants,)
)
v.)
)
CITY OF SEATTLE and TOM)
SUSOR & BILL MASCIARELLI,)
)
Respondents.)

SHB No. 89-46

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter came on for hearing before the Shorelines Hearings Board, William A. Harrison, Administrative Appeals Judge, presiding, and Board Members Judith A. Bendor, Chair, Wick Dufford, Harold S. Zimmerman, Nancy Burnett, Steven W. Morrison, and Mary Lou Block.

The matter is the request for review of a substantial development permit for locating a houseboat on Lake Union.

Appearances were as follows:

1. Todd Warmington, an officer of LUMA, Inc. for appellants.

2. Margaret Klockars, Assistant City Attorney for the City of Seattle.

3. Thomas Susor for himself.

The hearing was conducted in Seattle, Washington, on November 27, 1989.

Gene Parker & Associates provided court reporting services.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

This matter arises on Lake Union at the Phoenix Moorage on Fairview Avenue East.

II

In 1985, the Phoenix Moorage, by Jeffrey Wright owner in fee, recorded a condominium declaration in the records of King County. The same was examined and approved by the King County Assessor. That declaration designated houseboat sites "A" through "K" along the single pier of the moorage.

III

Sites "B" through "K" have each been occupied by houseboats. Site "A", at issue here, remained vacant largely because it is adjacent to the shore and was quite shallow in places.

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IV

In 1987, Jeffrey Wright applied to the City of Seattle for a Shoreline substantial development permit to dredge site "A" to accomodate a houseboat. Also, an application was made to relocate an existing houseboat ("the Jan Allan houseboat") into site "A". The City granted both proposals under the then existing Seattle Shoreline Master Program, Title 24 of the Seattle Municipal Code.

V

The City's shoreline approvals of 1987, just described, were appealed to this Board (SHB 87-46). The owner of adjacent property on Fairview Avenue East, Lakeshore Moorings, Inc., moved successfully for intervention. That case was resolved by agreement amongst the parties, including Lakeshore Moorings, Inc. In pertinent part, the agreement provided:

3. ...Unit A may be dredged to accomodate the floating shop and/or future location of a houseboat...

The proposal to relocate the houseboat then under consideration, the Jan Allan houseboat, was withdrawn. A plan of Phoenix Moorage, including site "A", was appended to and incorporated into the settlement agreement.

VI

Following the agreement just described, site "A" was dredged by Jeffrey Wright.

VII

In 1988, after the facts giving rise to SHB 87-46, Seattle amended its Shoreline Master Program and redesignated it as Title 23 of the Municipal Code.

VIII

In 1989, under the new Master Program, Title 23, Jeffrey Wright applied for a shoreline substantial development permit to allow relocating of a different existing houseboat ("the Susor/Masciarelli houseboat") into the newly dredged site "A". This was approved by Seattle. That approval is now appealed to this Board by Lake Union Moorings Associates (LUMA). LUMA is the successor of Lake Union Moorings, Inc., which intervened in SHB 87-46, and consists of the same principals.

IX

The Phoenix Moorage is non-conforming relative to the development standards (dimensions) required by the new (1988) Master Program. However, the Susor/Masciarelli houseboat would fit within lot "A" leaving 3 foot setbacks from site lines, and more than 16 feet from its wall to the wall of the adjacent houseboat. It is 9 1/2 feet high. There has been no showing of view blockage.

X

Any Conclusion of Law deemed to be a Finding of fact is hereby adopted as such. From these Findings of Fact, the Board makes these

FINAL FINDINGS OF FACT,
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CONCLUSIONS OF LAW

I

The shoreline in question is designated Urban Residential by the Seattle Shoreline Master Program (SSMP). Houseboats are a permitted use in that environment. SSMP Sec. 23.60.540(A).

II

The SSMP contains two provisions applicable to houseboat moorages which are non-conforming as to dimensions. The first relates to:

"The remodeling, replacement or rebuilding of a floating home..."

at a non-conforming moorage. SSMP Section 23.60.196C(1). The second relates to:

"The expansion of a non-conforming moorage..."

and is set forth at SSMP Section 23.60.196C(2).

III

The City of Seattle, both in processing this application, and in briefing before us now, urges that "C(1)" relating to "remodeling, replacement or rebuilding" is the applicable rule. While the City hastens to add that neither rule addresses directly the relocation of an existing houseboat to an existing moorage site, it interprets C(1) to include that situation. We agree.

IV

In this case, the moorage site in question, site A, was shown to be existing. This follows from the condominium declaration filed

1 several years prior to the present application. We find no merit in
2 the appellants' contention that they lacked notice of site A's
3 existence as the site was designated within the settlement agreement
4 in SHB 87-46 to which appellants were privy.

5 V

6 The proposed relocation of an existing houseboat to an existing
7 moorage site is consistent with the applicable SSMP provision,
8 Section 23.60.196C(1).

9 VI


10 Any Finding of Fact deemed to a Conclusion of Law is hereby
11 adopted as such. From these Conclusions of Law, the Board enters
12 this

ORDER

The shoreline substantial development permit granted by the City of Seattle to Jeffrey Wright, Thomas Susor and William R. Masciarelli is hereby affirmed.

DONE at Lacey, Washington this 28th day of December, 1989.


SHORELINES HEARINGS BOARD

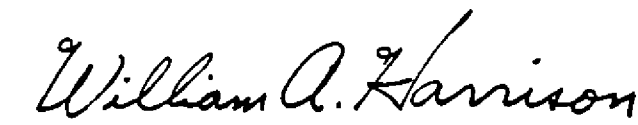

JUDITH A. BENDOR, Chair


WICK DUFFORD, Member


HAROLD S. ZIMMERMAN, Member


STEVEN W. MORRISON, Member


MARY LOU BLOCK, Member



WILLIAM A. HARRISON
Administrative Appeals Judge


FINAL FINDINGS OF FACT,
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1 There being no further matters before the Board herein, this
2 appeal is hereby DISMISSED.


3 DONE this 15th day of November, 1989.

5 SHORELINES HEARINGS BOARD

6 
7 JUDITH A. BENDOR, Chair

8 
9 WICK DUFFORD, Member

10 
11 HAROLD S. ZIMMERMAN, Member

12 
13 NANCY BURNETTE, Member

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R:09/29/89

EXHIBIT A
To Stipulation and Order

AMENDMENT TO BOTHELL SHORELINE MASTER PROGRAM

1. Add the following language at page 42 following the section describing the Urban Environment:

4. URBAN-SPECIAL MANAGEMENT (USM) OVERLAY DESIGNATION

- A. Objectives of USM Designation. The USM overlay designation shall be used to designate areas of special environmental concern within Urban Environments. The provisions of the USM designation shall supplement and be enforced in addition to the provisions governing the Urban Environment. The USM designation embodies the Urban characteristics described above together with characteristics of the Conservancy Environment. Within areas designated USM, natural resource protection shall be given primary emphasis but shall be considered in a balanced manner with accommodating reasonable and appropriate urban expansion. The intent of the USM designation is to incorporate the best solution to further the goals of both the Conservancy and Urban designations within a special management area.

- B. Performance Standards. In addition to other applicable provisions of this Master Program, the following performance standards for resource protection and public access shall apply to all uses and activities within the USM designation. In the event of a conflict between any performance standard of the USM designation and any other provision of the Master Program, the USM performance standard shall control. As used in this section, the terms "wetland" and "wetlands" shall be synonymous with "associated marshes, bogs and swamps" as defined in WAC 173-22-030(5) and 173-22-040(3)(c):

- 1) Riparian Corridor.

- a) Specific stream management plans which address creation, preservation, enhancement, restoration, and maintenance of fish and wildlife habitat within the riparian corridor shall be incorporated in permit approv-

als. Such plans shall provide a natural riparian habitat corridor averaging one hundred feet in width on each side of the ordinary high water mark of all rivers and streams regulated by the Shoreline Management Act, provided that such corridor shall not be less than seventy-five feet in width on each side at any point, and that the aggregate area included within the corridor shall not be less than the area which would have been included if a uniform width of 100 feet on each side had been provided.

- b) As used in this section, the term "natural riparian habitat corridor" shall mean the stream-side environment designed and maintained primarily for fisheries and wildlife habitat, water quality improvements and secondarily for bio-engineered flood control works, while allowing controlled public access to avoid damage to the resource.
- c) Consistent with the conservation objectives contained in this Master Program, public access shall be provided to allow the public to enjoy the riparian corridor in the form of trails, viewing areas and other compatible recreational amenities.

2) Wetlands.

- a) Specific wetland management plans which address creation, preservation, enhancement, restoration, and maintenance of wetland habitat shall be incorporated in permit approvals. Wetland mitigation provisions shall be included in the plan, and shall provide for a bond to implement the mitigation plan if the required mitigation, including monitoring, cannot be com-

pleted by the expected project completion date. Such plans shall provide a natural buffer around and adjacent to all wetlands, except as otherwise authorized by permit. All buffers shall be not less than fifty feet in width unless the applicant demonstrates that a narrower buffer will provide equivalent protection and environmental benefit.

- b) As used in this section, the term "natural buffer" shall mean a parcel or strip of land that is designed, planted and designated to permanently remain vegetated in an undisturbed and natural condition to protect an adjacent aquatic or wetland site from upland impacts and to provide habitat for wildlife.
- c) Mitigation shall be required whenever a use or activity will have a direct adverse impact upon a wetland. The following methods of providing mitigation shall be considered and employed as appropriate, consistent with the provisions of the USM designation:
 - 1) avoid the impact altogether by not taking an action or part of an action;
 - 2) minimize impacts by limiting the degree or magnitude of the action and its implementation;
 - 3) rectify the impact by repairing, rehabilitating, or restoring the affected environment;
 - 4) reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action; and

- 5) compensate for the impact by replacing or providing substitute resources or environments.

The methods of providing mitigation shall be prioritized in the order listed unless the applicant can demonstrate equivalent environmental benefit can be achieved by altering the prioritization. The listed methods are not mutually exclusive. Combinations of methods may be employed as appropriate.

- d) Wetlands which are disturbed by construction, development or activities, except when authorized by a shoreline permit, shall be completely restored, or complete restoration provided for, upon project occupation or use.
- e) Wetlands shall not be developed unless authorized by conditional use permit and unless all of the following conditions are met:
 - 1) all reasonable alternatives, solutions and designs, including location of the development on non-wetland portions of the development site, have been demonstrated to be infeasible, including appropriate consideration of economic constraints in the context of the provisions of the USM designation;
 - 2) the proposal will result in no net loss of wetland functional values as defined in subsection (h) below; and
 - 3) the proposal will be in the public interest and will result in an overall environmental benefit in light of the provisions of the USM designation.

- f) Projects proposed within wetlands shall be designed to minimize adverse environmental effects to the highest reasonable degree.
- g) Approval of proposals for compensation for wetland losses and impacts shall be based upon an evaluation of which of the following options or combination of options listed in the general order of priority will best achieve the intent of the provisions of the USM designation under the circumstances of the particular case:
 - 1) complete restoration;
 - 2) in-kind replacement in the same functional area;
 - 3) in-kind replacement outside the area;
 - 4) out-of-kind replacement inside the area; and
 - 5) out-of-kind replacement outside the area.
- h) Mitigation of wetland impacts must include full replacement of wetland functional values. "Functional values" shall mean the relative efficiency of the type of wetland in terms of the ecological functions it performs, and the recreational benefits and aesthetic and spacial characteristics afforded. Determination of functional values requires identification of functions performed and quantification of the degree to which the wetland performs each function. Wetland functional values shall be calculated using the best professional judgment of a qualified wetland ecologist using the best available technology. "Best available tech-

nology" means the most effective method, technique, or product available which is generally accepted in the field, and which is demonstrated to be reliable, effective and preferably low maintenance.

i) Compensatory mitigation proposals shall provide for the replacement of wetlands at a ratio of at least 1-1/4 acre of replacement wetland to 1 acre of replaced wetland unless a lesser amount of replacement wetland is demonstrated to provide an equal or greater environmental benefit.

1) Actual replacement area will be determined on a case-by-case basis, and in general will be greater, but in some cases may be reduced from original wetland area due to historical success rates, length of time required to establish functions and differences in environmental design parameters.

2) The determination of required replacement area shall include an analysis of: a) the functions served by the type of wetland being replaced and those served by the type of replacement wetlands, and b) the extent to which these functions are or will be served, and c) the length of time required to replace said functions.

C. Conditional Uses. In addition to the requirements for conditional use permits established by other provisions of the Bothell Master Program, a shoreline conditional use permit shall be required for all substantial development as defined in RCW 90.58.030 within areas designated USM which establishes or expands the development footprint. As used in this section, "development

footprint" shall mean those portions of the development site upon, under or over which any structure, pavement or other impervious surface, fill, utility facility or landscaping is erected, or installed. "Utility facility" shall include: 1) water, sanitary, storm sewer, drainage, electrical, gas, and telecommunications lines; 2) related pumping stations and equipment; and 3) drainage ditches and swales. WAC 173-14-064 shall govern revisions to approved conditional use permits.

2. Subsection 4 on page 44 should be amended to read:

4. AREA #4 (Both sides of North Creek within Bothell City limits)

This area has been designated as primarily Urban and Urban - Special Management, because it is believed that this represents Bothell's public interest in respect to the future growth and development of the area. This designation is based primarily on:

- a. the limited expansion room available in, and the nature of, the existing Bothell Central Business District. The CBD is primarily oriented to local service needs and specialized regional service needs. It is not anticipated the CBD will or should become a major regional shopping center. Its configuration, expansion possibilities, development pattern, present uses and goals are not compatible with the concept of a major commercial development. If the community chooses to significantly expand its commercial development, the North Creek Valley is the only sizeable and suitable location available;
- b. the availability of large, developable sites in the North Creek Valley in single ownerships which could provide an opportunity for the City to insure that any development would be planned as a harmonious, well-coordinated unit through the planned unit development or contract rezone process; and
- c. the regional access afforded by I-405 and future SR 522 and interchange connections to the area.